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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 63 and 64

THE ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, PRESIDENT, AND F. H. NEMITZ, SENIOR VICE PRESIDENT, AND BROTHERHOOD OF RAILROAD TRAINMEN, A. F. WHITNEY, PRESIDENT, AND S. R. HARVEY, ASSISTANT PRESIDENT, *Petitioners*,

vs.

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, L. O. MURDOCK, H. J. REESER, J. W. COX, E. W. FOWLER, R. A. WALTON, W. O. HOLMES, AND J. M. FOX, *Respondents*, AND RAILROAD YARDMASTERS OF AMERICA, GREAT NORTHERN RAILWAY COMPANY, AND SOUTHERN PACIFIC COMPANY, *Intervenors-Respondents*.

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Opinions Below.

The opinion of the District Court, which is not officially reported, appears at R. 222-227.

The opinion of the Circuit Court of Appeals appears at R. 271-279 and is reported in 152 F. 2d 325 (December 21, 1945).

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended (28 U. S. C. §347). Petitioners applied on March 18, 1946 for a writ of certiorari to review the judgment of the Circuit Court of Appeals entered December 21, 1945, and this Court granted certiorari on April 22, 1946.

Statute Involved.

The statute involved is the Railway Labor Act, and particularly Section 3 First (h), which defines the jurisdiction of the four divisions of the National Railroad Adjustment Board. That section is quoted in full in the appendix to this brief (*infra*, p. 73).

STATEMENT OF THE CASE.

The Issue.

The Circuit Court of Appeals affirmed the declaratory judgment of the District Court, holding, as respondents contended, that the Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction of disputes involving yardmasters. Petitioners claim that the First Division has exclusive jurisdiction of such disputes.

The Railway Labor Act, as amended in 1934, provides that "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions," if unadjusted, may be referred to "the appropriate division of the Adjustment Board." 45 U. S. C., Sec. 153 First (i).

The single issue below was whether the First or the Fourth Division has jurisdiction of disputes involving railroad yardmasters, which in turn depends upon whether or not yardmasters are "yard-service employees" whose disputes are expressly assigned to the First Division. If yardmasters are not "yard-service employees" their disputes are subject to the catch-all jurisdiction of the Fourth Division.

The jurisdiction of the four divisions of the Board is defined in Section 3 First (h) of the Act. Disputes of employees in certain specifically designated crafts are assigned to each division. The Fourth Division has also a catch-all jurisdiction of all disputes not assigned to the other three divisions. The parties are in agreement that the statute does not assign disputes involving yardmasters

to the Second or the Third Division. The First Division has jurisdiction over disputes involving

> "train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees."

It will be noted that yardmasters are not specifically mentioned. The Fourth Division has jurisdiction of disputes involving employees of water carriers, and

> *"all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions."*[1]

The Parties.

This is primarily a contest between rival labor organizations whose memberships include yardmasters. On one side of the controversy are the Brotherhood of Railroad Trainmen and the Order of Railway Conductors, on the other, the Railroad Yardmasters of America.

The petitioners, the Trainmen and Conductors organizations, two of the so-called Big Four railroad labor organizations, include in their vast membership many train- and yard-service employees, but relatively few yardmasters.

The intervenor-respondent, Railroad Yardmasters of America, represents a majority of the yardmasters. In its brief in this Court that organization asserts that it now represents in excess of 70% of all yardmasters. It is agreed (R. 161-162) that in August 1943, when the parties entered into a stipulation of facts, the representation of yardmasters by labor organizations was as follows:

---

[1] The emphasis here and in all other quotations in this brief has been added, unless otherwise noted.

Labor Organizations	% of Railroad Mileage Represented
1. Petitioners:	
Brotherhood of Railroad Trainmen	15
Order of Railway Conductors	7
Total, Petitioners	22%
2. Intervenor-Respondent:	
Railroad Yardmasters of America	60
3. Other Organizations:	
System Associations	7.5
American Railway Supervisors' Association	4.5
Railroad Yardmasters of North America	5
Switchmen's Union of North America	1
Total, Intervenor-Respondent and Others	78%

The carrier and the labor members of the First and the Fourth Divisions of the Adjustment Board were made defendants. The carrier members of both divisions, respondents here, were appellees below. The labor members of the First Division, petitioners here, were appellants below; the labor members of the Fourth Division made no appearance.

The Interests of the Respective Parties.

Each division of the National Railroad Adjustment Board is made up of an equal number of labor and carrier representatives. The national labor organizations, and the carriers, are authorized by the statute to select their respective representatives and to designate the division on which each such representative shall serve. 45 U. S. C., Sec. 153 First (b) and (c). The petitioners, the Trainmen and Conductors organizations, have placed two of

their members on the First Division and contend that all yardmaster disputes must be heard by that division.

The intervenor, Railroad Yardmasters of America, which represents yardmasters on three times as much mileage as both of the petitioners together, but has not succeeded in placing one of its members on any division, contends that the Fourth Division has jurisdiction of yardmaster disputes. Other labor organizations which have, in the aggregate, 17% of the represented mileage, and like the intervenor do not have a member representative on any division, also submit their disputes to the Fourth Division.[1] In short, the two petitioners, which purport to speak for all yardmasters but in fact represent only a small minority (22%) of that craft, contend that all yardmaster disputes shall be heard by the First Division on which they have two member representatives, whereas the intervenor and other yardmaster organizations, which represent 77% of the yardmasters, but have no member representative on any division, submit their disputes to the Fourth Division.[2]

This is the second case to arise out of the controversy over the handling of yardmaster disputes. In the instant case petitioners asked the District Court to declare that the First Division has jurisdiction of such disputes. In 1938, within three years after the Board began to function,[3] the Railroad Yardmasters of America, intervenor

[1] See Annual Reports of the National Mediation Board, including Annual Reports of the National Railroad Adjustment Board, 1937, p. 34, 1939, p. 41, 1941, p. 60, 1942, p. 60, 1943, p. 60, and 1944, p. 56.

[2] The Switchmen's Union of North America, which has 1% of the represented mileage (see table, *supra*, p. 5), has a member representative on the First Division but has not joined with the petitioners in this suit.

[3] The National Railroad Adjustment Board was created by Section 3 of the Railway Labor Act in 1934. The first awards of the Board were issued in 1935. The awards are published by the

here, sought a mandatory injunction requiring the Fourth Division to accept yardmaster disputes. Members of the Fourth Division were the defendants in that suit (referred to herein as Chancery No. 16031) and did not oppose the petition. The Trainmen and Conductors, petitioners here, did not intervene in the case. A decree was entered declaring that the Fourth Division had jurisdiction of yardmaster disputes and directing that division to hear and determine certain yardmaster disputes over the acceptance of which the carrier and the labor members had deadlocked. R. 119.

The carriers as a group have representatives on both the First and the Fourth Divisions, and except for the fact that the great majority of the yardmasters desire to have their disputes heard by the Fourth Division, the carriers' only interest in the controversy is that the direction of the statute be observed in the determination of yardmaster disputes. The carriers believe that the statute lodges jurisdiction of such disputes in the Fourth Division, as contended by the intervenor, Railroad Yardmasters of America.

National Railroad Adjustment Board in four series of bound volumes, one series for each of the four divisions. Award No. 1, First Division, is dated April 4, 1935, and Award No. 1, Fourth Division, is dated March 29, 1935.

Summary of Argument.

1. The term "yard-service employees" was taken from the railroad industry, in which it has a particular and well-defined meaning. The District Court found from the evidence that the term does not include yardmasters. There was no conflict in the oral testimony on the meaning of the term, and the accuracy of that testimony was conclusively established by respondents' documentary evidence showing the regular usage of the term by labor organizations, the carriers, and administrative agencies. The Circuit Court of Appeals correctly held that the District Court's finding was amply supported and should not be disturbed, and properly affirmed the District Court's conclusion that yardmasters, not being included among the crafts whose disputes are assigned to the First Division, are required by the statute to submit their disputes to the Fourth Division.

2. Implicitly recognizing that yardmasters are not yard-service employees, petitioners have built their case from the beginning on the argument (a) that yardmasters and yard-service employees were "aligned together" prior to the enactment of the present statute in 1934, (b) that since 1934 there has been an "administrative interpretation" that the jurisdiction of the First Division includes yardmaster disputes, (c) that disputes of yardmasters should be submitted to the First Division because their work is closely related to that of the yard-service employees whom they supervise, and (d) that the Fourth Division is primarily a marine body:

(a) The claim of an historical alignment of yardmasters and yard-service employees prior to 1934, whether in labor representation or in the submission of disputes to adjustment boards, is at variance with undisputed facts. Peti-

tioners' representation of yardmasters prior to 1934 was insignificant. The Railroad Yardmasters of America is and always has been the principal yardmaster organization. If and to the limited extent that there were, prior to 1934, any yardmaster disputes and disputes of yard-service employees submitted to the same adjustment board, that board had jurisdiction only because of the consent of a particular labor organization or organizations and a particular carrier or carriers, evidenced by a written agreement, and not because any one considered yardmasters to be yard-service employees. Under the present statute, however, the jurisdiction of the several divisions of the National Railroad Adjustment Board is defined in terms of crafts or classes of employees, without regard to labor representation or employment by a particular carrier. Consequently, even if yardmasters and yard-service employees had been "aligned" in the past, that fact would not draw the disputes of yardmasters into the First Division if they were not yard-service employees.

(b) The claimed administrative interpretation of the jurisdiction of the First Division has never existed. Within three years after the National Railroad Adjustment Board began to function, both the First and the Fourth Divisions had deadlocked on the acceptance of yardmaster disputes. Two court cases have been brought by the rival labor organizations for the very reason that the action of the Board has not settled the controversy. The First Division has never discussed the jurisdictional question here involved, or made a ruling thereon, in any award rendered by it.

(c) The argument that disputes of employees are or should be assigned to the various divisions of the National Railroad Adjustment Board according to some scheme of the related work is contrary to the terms of the statute

and would in practice lead only to confusion. The work of yardmasters is closely related to the work of employees whose disputes are divided among all four divisions of the Board.

(d) The Fourth Division of the National Railroad Adjustment Board is neither in theory nor in actuality a marine body. The essence of its jurisdiction is generality, embracing all disputes not expressly assigned to the first three divisions. In practice, the work of the Fourth Division has been almost wholly in the railroad field, and petitioners' suggestion that its members are inexperienced or incompetent to deal with yardmaster disputes is not supported by the facts.

ARGUMENT.

Foreword.

The plan of the argument that follows is first to state and support the District Court's construction of the statute, and then to show that both courts below properly rejected each of the reasons advanced by petitioners for a different conclusion.

Petitioners' arguments are all designed to create doubt over the meaning of the statutory language. They assume to resolve such doubt by argument concerning the intent of Congress, which is said to be indicated by the structure of antecedent machinery for the adjustment of disputes, by administrative interpretation, and by the relationship between the work of yardmasters and yard-service employees. Those considerations, which are discussed in other sections of this brief, were carefully weighed by the courts below and found to yield nothing of value. They would be appropriate in any event, we suggest, only as an aid to the construction of a vague or ambiguous statute. In defining the jurisdiction of the First Division the statute uses a term not of common and general usage, but a trade term, admittedly current among and familiar to railroad men. The testimony established without dispute that that term has long had a particular and well-defined meaning in the trade from which it was taken. R. 191, 196, 197, 211. That being so, the problem of the District Court was to ascertain as a matter of objective fact whether, in the language of the railroad business, yardmasters are included within the term "yard-service employees." That is what the court did, as his opinion shows.

The only disputes subject to the First, Second, and Third

Divisions are those that are expressly assigned to those divisions; all other disputes go to the Fourth Division. The statute does not refer to yardmasters by name in the designation of crafts of employees whose disputes are embraced in the jurisdiction of the First Division. The decisive question in the District Court, therefore, was whether yardmasters were included within the statutory term "train- and yard-service employees." If so, their disputes would be found subject to the jurisdiction of the First Division, for that division hears

> "disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen and yard-service employees."[1]

But if yardmasters are not included within the term "train- and yard-service employees," their disputes must be submitted to the Fourth Division, which hears

> "disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, *and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions.*"[1]

The decision below was adverse to petitioners, and they complain, not only of the conclusion of the District Court, but of the method followed by the court in resolving the controversy. It may be useful, therefore, to state very briefly at the outset what the respective parties offered to assist the court in a determination of the meaning of the jurisdictional words of the statute.

The parties entered into a stipulation (R. 155-188) describing a railroad yard and the work performed there, identifying the classes and crafts of employees who work in the yard, and the duties of yardmasters. Petitioners' case-in-chief consisted only in the submission of that stipulation.

---

[1] Section 3 First (h), 45 U. S. C. § 153 First (h).

Respondents then offered direct evidence, both oral and documentary, on the meaning of the railroad term "yard-service employees." First, they produced three veteran railroad officers who testified in the presence of the court and were cross-examined by the adverse parties. Each of these witnesses had come up through the ranks, and on the basis of long and extensive experience testified on the meaning of the railroad term "yard-service employees." The trial court had full opportunity to weigh the value of this evidence.

Secondly, respondents placed before the court a large volume of documentary evidence to show that the term "yard-service employees" as used day in and day out in the railroad business does not mean or include yardmasters.[1] This evidence was taken from the literature of the industry, and especially from documents written by the labor organizations themselves. By its very nature it shows how railroad people use the term in their everyday work when they are speaking or writing under circumstances entirely unconnected with this case.

In rebuttal, petitioners then called one witness who testified on the meaning of the statutory term in question and the manner in which disputes of yardmasters were adjusted prior to the enactment of the 1934 statute, and two witnesses who testified with reference to "the promotion from yard-service employee to yardmaster." R. 218, 220. Petitioners also offered certain documents relating to adjustment boards prior to 1934 and other material bearing upon an alleged administrative interpretation of the present statute.[1]

It will be seen that the petitioners did not approach this case in the District Court as one in which the meaning of

[1] By stipulation, the exhibits of all parties introduced at the trial have not been reproduced in the printed record but have been transmitted from the Circuit Court of Appeals to the Clerk of this Court as a part of the record.

a certain trade term used by Congress was to be sought by direct evidence of its actual use in the field from which it was taken, and the statute then applied accordingly. Instead, they went to sources outside the language of the statute, seeking to establish an intent of Congress that would override the plain meaning of that language. The District Court chose the direct approach; it found the intent of Congress in the language of the statute. Petitioners' suggestions that the intent of Congress be drawn from extraneous sources rather than the words of the Act were fully considered by the court, but were rejected. They were rejected because they did not show any legislative intent and because, on the other hand, the direct evidence clearly established the meaning of the jurisdictional words.

I.

Yardmasters Are Not "Yard-Service Employees."

A railroad yard is a defined area, containing a system of tracks, within which trains are made up and broken up and cars are received from shippers and delivered to consignees. A great volume of other work is done in the yard area. Various and voluminous records are made, an elaborate signal and communications system is operated, freight is checked and weighed, cars are repaired, and the entire physical plant is constantly maintained. The yardmaster directs and supervises all the work done within the limits of the yard, and is in charge of all the many classes and crafts of employees who work in the yard, including the road-service employees so long as the trains operated by them are within the limits of the yard. R. 162-169.

Several points that are of the utmost importance in their bearing on the railroad meaning of the decisive term are established by the stipulation, or by admission otherwise, as follows:

1. The men who actually make up and break up trains in the yard are known as yardmen, yard crews, or yard-service employees, and in the language of railroad men these three terms are in all respects equivalents and have the same meaning. Petitioners' witness Nemitz testified on cross-examination as follows (R. 212):

> "Q. * * * Let me ask you this, first: Can you agree with the witnesses who were on the stand this morning, at least to this extent, that in railroad parlance 'yard service employees' and 'yardmen' and 'yard crews' generally speaking mean the same thing?
> "A. Yes, sir."

2. The stipulation itself observes the distinction between the yardmasters who supervise the handling of the trains and the yardmen who perform that work, in the following language (R. 162):

> "The work performed in a yard includes switching, making and breaking up trains, storing cars, moving trains into, out of, and through the yard, inspecting cars and freight, repairing cars, maintaining track and other fixed equipment, sending and receiving messages by telephone and telegraph, keeping records, and making reports. The employees who perform such work include those known as yardmen, that is, switch or yard foremen, yard helpers, and switch-tenders, and employees in train and engine service, such as engineers, firemen, hostlers, conductors, brakemen, flagmen, and baggagemen; they also include clerks, telephone and telegraph operators in yard offices, towermen operating interlocking switches, maintenance-of-way foremen and laborers, signal department forces engaged in the maintenance of yard signal plants, and car inspectors and repairers. *All such yardmen and other employees performing work in a yard are directed and supervised in their work by a yardmaster*, with the aid, if necessary, of one or more assistant yardmasters. *Yardmasters do not and may not perform the work of yardmen* and employees in train and engine service; they may perform some

clerical work, if their entire time is not taken up with the direction and supervision of yardmen and other employees working in yards."

3. The yardmaster also directs and supervises the work of many classes or crafts of employees who work in the yard but are not yard-service employees. For example, all road-service employees while on duty within the confines of the yard, the employees who check and weigh the freight, who repair the cars, who operate the signal and communications system, who maintain the property, and who make records and perform various clerical services. Petitioners were obliged to admit that such employees, although performing services in the yard, are not yard-service employees in the parlance of railroad men, and that the statute assigns the disputes of many such employees, not to the First Division, but to other divisions. Petitioners' witness Nemitz, testified further as follows (R. 213):

"Q. * * * In other words, you are not telling the court that you think, for example, that these clerical people that work in the yards, or car checkers, the weighmasters, or clerks, you don't think of those as yardmen, do you?

"A. No, sir.

"Q. So that the terms 'yard service employees,' and the equivalent terms, 'yardmen' and 'yard crews,' they don't include all of the men that work within the yard, or within the switching limits, do they?

"A. They would not include such as the storekeepers, or the section men, or perhaps other brakemen [trackmen], or clerks, and so on."

THERE WAS NO CONFLICT IN THE TESTIMONY AS TO THE MEANING OF THE TERM "YARD-SERVICE EMPLOYEES."

The respondents' first witness, an executive of the Indiana Harbor Belt Railroad Company, which has approximately 45 miles of line and six yards, and employs approximately 60 yardmasters and hundreds of yard-service em-

ployees (R. 190, 192), testified, on the basis of more than forty years of railroad experience, that common usage in the industry confines the term "yard-service employees" to the following (R. 191):

> "It refers to certain employees who make up and break up trains in yards within defined limits.
>
> "They also do other switching of cars, placing and pulling of cars at industries within those yards; namely, engineers, firemen, conductors or engine foremen, yard brakemen, switchmen or helpers, as they are termed."

The witness further testified that, in railroad usage, yardmasters are not referred to as yard-service employees, and that that term is merely another name for the employees who are also referred to by the terms "yardmen" and "yard crew." R. 191. With that statement petitioners' witness agreed unequivocally, as shown above (p. 15).

The two remaining witnesses offered by the defendants, a superintendent of terminals for the Milwaukee Road (formerly a yard clerk and a yardmaster), and an assistant manager of personnel for the Southern Pacific (formerly a yard clerk, brakeman, conductor, and trainmaster), corroborated the testimony of the first witness on the actual railroad usage of the disputed term. R. 195-199.

Testifying on rebuttal, petitioners' witness Nemitz confirmed in explicit terms the testimony of respondents' witnesses that the statutory term "yard-service employees" has a definite and well-defined meaning in the railroad business, and stated the trade meaning of the term in substantially the same language as that used by the witnesses for defendants. R. 211. The witness then went on to indicate a difference of opinion on the proper classification of yardmasters under the statute, an opinion which he repeated and elaborated on cross-examination with the ex-

planation that it was based upon the fact that in the past certain boards had heard disputes of both yardmasters and yard-service employees if they were members of the same labor organization. R. 211, 213-214.[1] This witness testified on direct examination as follows (R. 211):

> "Q. Mr. Nemitz, I will ask you whether or not as a result of your experience, both as an active worker for railroads, and as a result of your experience in the last twenty-five years in the various capacities which you have described, whether or not the yard service employees among railroad men has any particular or well defined meaning or understanding?
>
> "A. They have, yes. Usually they are considered men who work within the switching limits, or certain defined limits, generally referred to as switchmen, [sic] or yard limits. They perform a service such as placing cars at different industries, supplying cars of different kinds at different places within those switching or yard limits, and making up and breaking up trains, that is, they break up the incoming trains and they make up the outgoing trains, fixing them in their regular order for the handling by road crews, who will take them from one terminal to some other terminal, or some other point outside of the yard limits or switching limits."

His counsel then put to him the direct question (R. 211):

> "Q. What would you say as to whether or not the class or craft of yardmasters is generally understood to be included within the term or expression of 'yard service employees'?"

The witness replied (R. 211-212):

> "A. I would say that *they fit more nearly in with the yard service employees than with any other class.* They don't belong in the road service. They have no rights there. They don't belong in the clerical department. They have no rights there. Usually the yardmasters hold rights as yard foremen [conductors], or

[1] This statement of the petitioners' historical argument we discuss in another section of the brief.

as yard helpers in some yard on the railroad, where they hold rights as yardmaster, and where they perform services as yardmasters."

It would have been difficult for the witness to emphasize more pointedly the fact that yardmasters are a separate, independent craft.[1]

Both sides thus agreed that the jurisdictional words that the court was asked to construe had a common, well-defined meaning in the railroad business. The testimony of petitioners' witness on that meaning did not contradict the testimony of respondents' witnesses, but actually supported it.

The District Court in its memorandum opinion stated (R. 226):

"Three witnesses testified that among railroad operatives the term yard service employee did not include yardmasters. The one witness who testified for plaintiffs did not deny this. All he said was that 'they fit more nearly in with the yard service employees than any other class.' That certainly is not a statement they are members of that class. It implies that they are not, that they are not in any class mentioned in the statute but are more nearly related to the class of yard service employees than any other class. Clearly as to the direct evidence introduced on this subject the preponderance is against the plaintiffs."

The Circuit Court of Appeals stated in its opinion (R. 274):

"The testimony of all the witnesses did not differ

[1] The petitioners' brief in the District Court likewise expressly differentiated yardmasters from all other employees, in the following language:

"Yardmasters constitute a separate craft or class of employees and agreements covering rates of pay, rules and working conditions under which they operate on several railroads throughout the United States are filed with the National Mediation Board under the provisions of Section 155 (e) of the Railway Labor Act, as amended."

materially with respect to the definition of 'yard-service employees' as used by those engaged in the railroad business, and the court's finding adopted that definition. True, plaintiffs' one witness stated: 'I would say that they (yardmasters) fit more nearly in with the yard-service employees than with any other class.' However, he did not deny the accuracy of the definition of the terms 'yard-service employees' as given by all other witnesses testifying on this subject."

RESPONDENTS' DOCUMENTARY EVIDENCE OF THE MEANING OF THE RAILROAD TERM EMBRACED IN THE STATUTE.

The second type of evidence submitted by respondents at the trial consisted of a large number of documents showing the distinction that is observed in the everyday language of the industry, between the terms "yardmasters" and "yard-service employees," as used by railroad labor organizations, the carriers, and various administrative agencies. This type of evidence has the special merit of showing the habitual and candid railroad usage of these terms under circumstances quite unconnected with this case, or with the controversy that gave rise to the case.

It is important to a proper appraisal of this evidence to bear in mind that both sides agree that the terms "yard-service employees" and "yardmen" are synonymous. The respondents' witnesses so testified, (R. 191, 196, 197) and petitioners' witness Nemitz agreed (R. 212):

"Q. * * * Can you agree with the witnesses who were on the stand this morning, at least to this extent, that in railroad parlance 'yard service employees' and 'yardmen' and 'yard crews' generally speaking mean the same thing?

"A. Yes, sir."

The stipulation itself contains the following significant statement (R. 162): "Yardmasters do not and may not perform the work of yardmen * * *."

The first illustration of customary railroad usage to which we shall refer was supplied by one of the petitioners in another connection. Award 4548 of the First Division (included in Plaintiffs' Exhibit K) was made in a dispute between the Order of Railway Conductors and the Elgin, Joliet and Eastern Railway Company. On the first page of the report of the award, under the heading "Position of Employes," the Order of Railway Conductors states that in 1934 the Railway Company

> "took over the **employes in yard service** *and the yardmasters* employed by the Standard Oil Company."

The Order of Railway Conductors spoke in this way because yardmasters are not regarded as "employes in yard service." If yardmasters were so regarded, the Order of Railway Conductors would have omitted special and separate mention of that class of employees.

Apart from the present case the Order of Railway Conductors has been consistent in its use of "yard-service employees" as a term not including yardmasters. In Docket 6406, First Division, *Order of Railway Conductors* v. *Chicago and North Western Railway Company,* the submission filed by the Conductors (Defendants' Exhibit 3) states the case of one Dunleavy, who was first employed as a brakeman, then as a conductor, and was finally *promoted* to yardmaster in the Wood Street yard, but thereafter, when that yard was closed down,

> "was required to *revert back* to yard and/or road service * * *."

The distinction observed by the Order of Railway Conductors between yardmasters and yard-service employees, and between the work of yardmasters and the work constituting yard service, has also been regularly observed by the other petitioner in No. 63, the Brotherhood of Railroad Trainmen. In Docket 6837, First Division, *Brotherhood of Railroad Trainmen* v. *Chicago and North Western*

Railway Company (Defendants' Exhibit 3-A), the joint statement signed by a division superintendent of the Railway Company and a local chairman of the Brotherhood of Railroad Trainmen refers to *Yardmaster* Brazier, who displaced *Yardmaster* Meister,

> "'who in turn *returned to yard service* thus throwing Humm [a yardman] on the extra board.'"

The Brotherhood of Railroad Trainmen has been most zealous, apart from the present case, in insisting that yardmasters are not yard-service employees or yardmen, that the latter are entitled to all yard service, and that a yardmaster has no right to encroach upon their preserve. Defendants' Exhibits 1, 1-B, 1-C, 1-E, 1-F, and 1-G are cases before the First Division in which the Brotherhood of Railroad Trainmen has advanced these propositions, using language that unmistakably excludes yardmasters from the term "yard-service employees" or its equivalent, "yardmen."

Thus, Award 2065, First Division, related to a dispute between the Brotherhood of Railroad Trainmen and the Southern Pacific Company over the use of *"supervisory forces"* to perform *"yard service,"* and upon examination it turns out that the members of the "supervisory force" referred to by the Trainmen were *"Yardmasters* and other Supervisory force." Defendants' Exhibit 1-B, p. 1.

Award 4466, First Division, related to a dispute between the Brotherhood of Railroad Trainmen and the Terminal Railroad Association of St. Louis over "use of yardmasters to perform the duties of yardmen." Defendants' Exhibit 1-E, p. 1.

The dispute settled by Award 5816, First Division, *Brotherhood of Railroad Trainmen* v. *Missouri-Kansas-Texas Railroad Company*, was "account yardmaster performing *service for which yardmen are employed*" (De-

fendants' Exhibit 1-F, p. 1), and in the "Position of Employes" the Brotherhood of Railroad Trainmen made the following claim (Defendants' Exhibit 1-F, p. 2):

> "The Committee holds that the scope of the agreement *defines the class of employes known as yardmen, separating them from other classes of employees* for the purpose of entering into agreements covering rates of pay, rules and working conditions applicable to yard switching.
>
> "If it is the intent of the agreement to permit the Carrier to parcel its yard switching to *employes other than yardmen* there would be little need of a rule defining, classifying and separating yardmen from other employees.
>
> "We submit that the Carrier's agreement with its yardmen involves valuable property rights in the form of seniority to its yardmen who should be given all yard work within the confines of their designated seniority territory. It is evident the Carrier declared definite intent of recognizing seniority rights of yardmen to all yard switching service when it entered into agreement with this Organization defining and classifying them as yardmen with established rates of pay and other rules designating and establishing segregated districts for yardmen to work and exercise seniority rights. *To construe such agreement as embracing less than all the yard service would render its yardmen's seniority rights and the current agreement of little or no value,* as the Carrier could parcel its yard switching to other groups of employes with the consequence that there would finally be nothing left which would be subject to the agreement with its yardmen."

In the submission leading up to Award 7355, First Division, *Brotherhood of Railroad Trainmen* v. *Texas and Pacific Railway Company*, the Trainmen accused yardmasters of performing specified items of "yard service." Defendants' Exhibit 1-G, p. 1.

The position taken by the plaintiff labor organizations has also been taken by the Switchmen's Union of North America. See Defendants' Exhibit 1-A.

As one would expect, the carriers use the same language as the labor organizations, for in practice there has never been any dispute in railroad circles over the meaning of the term "yard-service employees." In Docket 11801, First Division (Defendants' Exhibit 3-B), the submission of the Brotherhood of Railroad Trainmen states that one Thomas Estle worked as a "helper and/or foreman [conductor] in charge of a crew in yard service" until he was made a yardmaster, and the Soo Line, in its submission, goes on to state that thereafter the yardmaster force was reduced and Estle

> "*returned to yard service* as a foreman and helper."

In Award 3609, First Division, *Brotherho l of Railroad Trainmen* v. *Baltimore & Ohio Railroad Company*, the carrier's statement (Defendant's Exhibit 1-D, p. 3) speaks of certain yardmen who had been promoted to yardmaster positions and then, as a result of a reduction in the yardmaster force,

> "*returned to yard service* in the exercise of their seniority rights under the Trainmen's Agreement."

The members of the First Division have in numerous cases repeatedly used "yard-service employees" in a sense exclusive of yardmasters. Award 2065, as mentioned above (p. 19), settled a case in which the Trainmen complained of the use of "Yardmasters and other Supervisory force" to perform "yard service." The "Findings" of the First Division (Defendants' Exhibit 1-B, p. 36) contain the following language:

> "This Division has rendered many awards denying Carriers the right to use supervising officers or others to perform the work of yardmen • • •.

> "In the light of the consolidation agreement • • • that three yardmen should have been continued in service as herders, it is clear that *the yard service employes* involved in this dispute were deprived of service to which they were entitled and would have enjoyed had *supervisory forces* [that is, yardmasters] not been used to perform herders' work instead of yardmen."

See also Awards 1464, 1728, 3055, 4466, 5816, and 7355, all in the First Division (Defendants' Exhibits 1, p. 2; 1-A, p. 5; 1-C, p. 5; 1-E, p. 6; 1-F, p. 5; and 1-G, p. 35), in which the First Division in its "Findings" used the same or substantially the same language as that just quoted.

The essential distinction between yardmasters and yard-service employees, in terms of the *supervisory service* performed by the first and the *yard service* performed by the second, was observed by the Fourth Division in the following passage in its opinion in Award 67, *Louisville and Nashville Railroad Company* v. *Railroad Yardmasters of America* (Defendants' Exhibit 1-H, p. 7):

> "During the period of construction of the Kentucky and Virginia Railroad, yard service under the supervision of a yardmaster was first established at Page, Kentucky, and later, when the line was built through to Lynch, Kentucky, yard service was established at Chad and Lynch, Kentucky, under the supervision of yardmasters located at Cumberland, Kentucky."

We submit that there is and can be no answer to the showing made as to the true meaning of the term in question by the objective, disinterested, everyday usage that appears in these submissions by the employee organizations and the carriers and in the findings of the carrier and labor members of the First and Fourth Divisions of the National Railroad Adjustment Board.

We are able to refer the Court also to the language and the practice of the Interstate Commerce Commission in this

connection. Illustrations of the Commission's use of "yard service" and "yard-service employees" are found in its report in *Ex Parte No. 106, Six-Hour Day Investigation*, 190 I. C. C. 750 (1932). Speaking of the Adamson Act, 39 Stat. 721, the Commission said (Defendants' Exhibit 2):

> "*Employees in road and yard service* • • •.[1] In practice the provisions of that act have been applied to engineers, firemen, conductors, hostlers, baggagemen, brakemen, and flagmen in road and yard service."

The Commission gives its own definition of "yard-service employees" in referring to certain rules

> "applying to yard service employees—train and engine service, switch tenders, hostlers and hostler helpers— • • •."

Petitioners stress the fact that "for long years the Interstate Commerce Commission has *grouped* yardmasters with the road and operating crafts."[2] Operating employees *must* be in road service or yard service, the petitioners say, and since yardmasters are not in road service they inevitably fall into yard service. This kind of logic ignores the facts. The terms "road service" and "yard service" developed with reference to men handling equipment on the road and in the yards, as a natural and necessary distinction between crews (conductor, engineer, fireman, and brakeman) working under two different sets of conditions and being paid on two different bases. R. 191. The Interstate Commerce Commission does not classify yardmasters as yardmen or yard-service employees. The material cited by petitioners merely has reference to the reporting of statistical information.

The rules to which petitioners refer (p. 41 of their brief) have been in effect since 1921, when the Commission issued

[1] Italics not added.

[2] But see n. 1, p. 16, *supra*.

an order with annexed rules entitled "Rules Governing the Classification of Steam Railway Employees and Reports of Their Service and Compensation." See Intervenor's Exhibit 6, first page (unnumbered). These rules set up forms for reports, on which the various classes of employees are arranged according to so-called Reporting Division. Same Exhibit, numbered pages 6-11.[1] Explanatory instructions pertaining to the forms stated that the Reporting Divisions were to be in accord with the definitions of such Divisions given in the *Classification and Index of Steam Railroad Occupations* prepared by the United States Railroad Labor Board. Intervenor's Exhibit 1.

The classification to which reference is made appears in Intervenor's Exhibit 1. This classification divides all railroad employees into so-called "Services." Yardmasters and yardmen are not in the same service. The yardmaster group is found under "Supervisory Skilled Trades and Labor Service," in which "the preponderant duties of incumbents are to supervise or to assist in supervising the work of subordinate foremen and other employees * * *." Intervenor's Exhibit 1. Yardmen, or yard-service employees, are found in a distinct service called "Train and Engine Service," in which the duties are "to operate or to assist in the operation of trains and engines in road and yard service; or to handle locomotives in and around yards and engine houses when not in road or switching service." Intervenor's Exhibit 1. The employees known generically as yard-service employees are listed under the Yard Conductor and Yard Foreman Group, the Yard Brakeman and Yard Helper and Switchtender Group, the Yard Engineer and Motorman Group, the Yard Fireman

[1] By an order of July 17, 1940, effective August 1, 1940, new numbers were assigned to the Reporting Divisions, but the method of reporting railway wage statistics was not changed. Intervenor's Exhibit 6, first two pages (unnumbered).

and Helper Group, and the Hostler Group. Intervenor's Exhibit 1.

Of course, the very reason why crafts of employees and things that differ, one from another, acquire different names and designations is that the use of such distinctive tags is an imperative necessity in everyday speech. We have already mentioned the historic distinction between "road service" and "yard service" (*supra*, p. 26). That alone would perhaps be sufficient to account for the development of the term "yard-service employee." But there is another cogent reason for the term. The men who actually handle the cars and trains in the yards, and the men who supervise not only that work, but all of the manifold activities in the yard, are in distinct crafts with entirely different duties and rights. In carrying on the business of the industry it is constantly necessary to differentiate between the two crafts. The use of the term "yard-service employees" to designate those who make up and break up trains in the yards, as distinguished from the yardmasters who supervise that and all other work in the yard, was born of that necessity and had become a part of the language of the business long before Congress used the term in the statute. The documentary evidence proves it.

A striking example of how deeply this distinction is ingrained in the thought and speech of railroad people, and how unconscious its use has become, is to be found in the examination of one of petitioners' witnesses by the regular and experienced attorney for the petitioning labor members of the First Division (R. 217-218):

"Q. By whom are you employed?
A. Chicago, Milwaukee & St. Paul Railroad.
Q. In what capacity?
A. Yardmaster.
Q. How long have you been in that position?

A. About three years.

Q. *Prior* to that time, were you engaged by that railroad in the yards *as a yard service employee*?

A. Yes, sir.

Q. Then *subsequently* you were *promoted to* the position of *yardmaster*, which you now occupy?

A. Yes, sir.

Q. I will ask you whether or not **the promotion from yard service employee to yardmaster** is in accordance with the scheduled agreement in effect on the property of that carrier?

A. Yes, sir."

This illustrates the process by which trade terms are created and come into everyday use, from which they eventually find their way into statutes. Even in the trial of the case petitioners were unable to avoid constant recognition of the very meaning of the term that they are seeking to defeat.

The documentary material offered by petitioners to show the meaning of the term "yard-service employees" (pp. 37-47 of their brief) has been assembled by them since the trial of the case in the District Court. Respondents introduced both oral and documentary evidence on that point at the trial, but petitioners produced only one witness on rebuttal and no documentary evidence for the purpose of showing the meaning of the term. Petitioners brought and tried this case primarily on the implicit premise that yardmasters, while not actually yard-service employees,[1] should nevertheless be required to submit their disputes to the First Division because, as their witness put it, "they fit more nearly in with the yard service employees than with any other class." R. 211. Their introduction of illustrations of alleged railroad usage in the appellate stages of this case was an afterthought.

With one single exception, the petitioners' claimed illus-

[1] See n. 1, p. 16, *supra*.

trations of usage are not primary sources taken from the language of the men who developed the terms in question—"yard service," "yardmaster," and "yardmen" or "yard-service employees." The material is of secondary character; it shows, not actual use of those terms in their native setting as a demonstration of their content and respective limitations, but various classifications or groupings of railroad employees for convenience in the presentation of statistics and other purposes. The examples generally are not taken from the language of the yard itself, but from the language of outsiders, and in the one exception the petitioners have misquoted the original document.

At pages 40-41 of their brief petitioners cite the Index Digest to the Awards of the First Division. One of the headings in that digest is, of course, "Yard Service," and under that heading is a subheading entitled "Yardmasters." This is offered to prove that yardmasters are regarded and referred to ordinarily as yard-service employees. Among the thirty other subheadings under "Yard Service," along with "Yardmasters," are the following: "Road Crews—Switching or Other Work in Yards" and "Road Service." Is it to be inferred, then, that road crews are also yard-service employees?

Examination of the awards listed under the subheading "Yardmasters" shows the reason for its inclusion in the index under the heading "Yard Service." Awards 5204, 5205, and 5206, for instance, are described in the Index Digest dated March 1, 1941, under the subheading "Yardmasters," (p. 347) as "Claims of brakemen and yardmen account *other than train or yard service employees* performing switching." The published awards show that the employees designated as *"other than train or yard service employees"* were *yardmasters* and *yard clerks*. The petitioners' example therefore proves the very opposite of their contention.

Petitioners refer to General Order No. 27 issued by the Director General of the Railroads, relating to the pay of "footboard yardmasters" when acting as substitutes for yardmasters (pp. 46-47 of their brief). The essential thing about "footboard yardmasters" is that they are not yardmasters, as the petitioners' quotation itself shows. The term is ironic. A "footboard yardmaster" is a yard foreman (also known in some sections of the country as engine foreman or yard conductor), who is the yardman immediately in charge and a member of the yard crew that handles trains and cars in the yard. The disputes of such an employee are referable to the First Division by specific assignment in Section 3 First (h) of the Act. It is a labored effort, indeed, to draw yardmaster disputes into the First Division by a nickname applied to conductors.

We have already shown (*supra*, pp. 26-28) that the Interstate Commerce Commission material relied upon by the petitioners does not support their contention and that the Commission classifies yardmasters for reporting purposes in the "Supervisory Skilled Trades and Labor Service" and classifies yard conductors or foremen, yard brakemen or helpers, switchtenders, yard engineers and motormen, yard firemen and helpers, and hostlers in "Train and Engine Service."

A number of the petitioners' examples (pp. 45, 46, and 47 of their brief) are nothing in substance but references to the petitioner organizations as representatives of train- and engine-service employees in road and yard service, including [that is, including in their membership] the yardmasters on a few roads. Such references, according to petitioners, put yardmasters into the class of yard-service employees. By the same token, a few stationmasters who belong to the Railroad Yardmasters of America are yardmasters.

The three-page effort to show (pp. 37-40 of petitioners' brief) that the National Mediation Board classifies yardmasters as yard-service employees can not conceal the fact that the tables on which the petitioners rely were discontinued after the Third Annual Report and have been replaced in all subsequent annual reports (1938, *et seq.*) by tables in which yardmasters are shown as a class separate from the class of yard-service employees—that is, "yard foremen, helpers, and switchtenders"—with which some anonymous statistician employed by the Board had originally lumped them.

Petitioners quote at length from the report made by an Emergency Board on the 1943 wage dispute (p. 44 of their brief). That dispute involved only the members of the petitioner organizations and three other organizations, the so-called Five Operating Brotherhoods, and the authors of the report expressly confined their remarks to the employees involved, the vast bulk of whom were train- and engine-service employees on the road and in the yards. The Railroad Yardmasters of America were not involved, hence neither were yardmasters in general. The report went on to say, a few lines after petitioners stopped quoting:

> "The railroad labor organizations involved in this case [previously characterized as 'train and engine and yard service employees' and 'operating employees' engaged in 'road service' and 'yard service'] *also* represent a few *other* relatively small groups of railroad employees on some or all of the carriers. These groups include sleeping car conductors, dining car stewards and chefs, *and yardmasters who perform supervisory duties in the yards and terminals of the railroads.*"[1]

[1] Report to the President by the Emergency Board, appointed May 31, 1943, pursuant to the Railway Labor Act and Executive Orders 9172 and 9299, dated September 25, 1943, p. 12.

In the same report Table I, at pages 13 and 14, shows basic daily wage rates for locomotive engineers, firemen, helpers, hostlers, and hostler helpers, and two subdivisions of the table are devoted to "Yard Service," in one of which the wages of engineers, firemen, and electric helpers are shown, and in the other the wages of yard foremen (conductors), yard helpers (brakemen or switchmen), and switchtenders. Yardmasters do not appear.

At page 15 the authors of the report (Messrs. Walter P. Stacy, I. L. Sharfman, and Frank M. Swacker) recognize the basic distinction between road service and yard service that we have heretofore pointed out (*supra*, p. 26):

> "Railroad train employees are paid in one of two general ways, depending upon whether they are engaged in yard service or in road service. In yard service, employees are ordinarily paid by the day for an eight-hour day. * * * Workers employed in road service, on the other hand, are paid on the so-called dual basis of pay, involving both hours and mileage."[1]

At page 31 of the report, Table II shows the average hourly earnings of 22 classes of train and engine and yard-service employees. Yardmasters are not included. The table is totalled: "All train and engine service employees—22 classes."

The petitioners' one remaining example (p. 46 of their brief) is taken from a statement of a dispute submitted to an early adjustment board back in 1929. This is petitioners' only illustration of true railroad usage, by which we mean usage of the term by railroad men who actually conduct the railroad business, the men who developed the meanings of the terms "yard service" and "yard-service employees" that were current when the 1934 Act was passed and were adopted by Congress in writing the statute.

[1] Yardmasters are ordinarily paid by the month.

This example speaks of certain yardmasters having been employed "*for* yard service." The meaning of the passage, especially the use of the word "for," is not clear, and it certainly is not evidence that yardmasters are embraced *within* the term "yard-service employees" in ordinary and general railroad usage. We note that in petitioners' quotation in their brief the words "*for* yard service", which appear in the original, have been changed to read "*in* yard service." See Case No. 2948 in Plaintiffs' Exhibit J.

The secondary type of evidence on which petitioners are compelled largely to rely is inherently untrustworthy for the purpose at hand, and the contrast between such evidence, diffuse and never quite to the point, and the evidence submitted by respondents, taken direct from the language of railroad men and demonstrating concisely the actual and customary use of the very terms in question, is significant.

In *O'Hara* v. *Luckenbach S. S. Co.*, 269 U. S. 364 (1926), the Supreme Court had under consideration the nautical term "divided into watches," as used in the Seamen's Act of March 4, 1915. In support of its conclusion on the meaning of that term, the court said (pp. 370-371):

> "In this conclusion we are fortified by the consideration that the legislation deals with seamen and the merchant marine and, consequently, the phrase 'divided into . . . watches' is to be given the meaning which it had acquired in the language and usages of the trade to which the Act relates, in accordance with the rule stated in *Unwin* v. *Hanson*, [1891] L. R. 2 Q. B. 115, 119: 'If the Act is one passed with reference to a particular trade, business or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the

common or ordinary meaning of the words.' In the understanding of the sailor, a division into 'watches,' as applied to the personnel of the ship, connotes a division as nearly equal as possible."

The court then referred to a marine encyclopedia and a dictionary of sea terms, in which the term in question was either used in such a way as to indicate its meaning or was expressly defined.

We refer also to *General Petroleum Corp.* v. *United States*, 24 F. Supp. 285, 286 (D. C. S. D. Cal., 1938), in which the court said:

> "Words do not become a part of language unless they get themselves accepted as a part of the everyday speech of man. Technical words, of course, are given the technical significance which their acceptance by a particular craft or group has conferred upon them."

See also *Hoffman* v. *Palmer*, 129 F. (2d) 76, 984 (C. C. A. 2, 1942) and *Massachusetts Protective Ass'n.* v. *United States*, 114 F. (2d) 304 (C. C. A. 1, 1940).

In the "everyday speech" of railroad men, yardmasters are not referred to as yard-service employees, and the direct and primary evidence on the point, both oral and documentary, proves that the term "yard-service employees" has a clear "technical significance" that does not include that supervisory craft.

As indicated by the testimony of their witness, Nemitz, petitioners did not actually contend in the District Court that the craft of yardmasters are within the specific statutory designation "yard-service employees."[1] Their primary contention was, instead, that disputes involving yardmasters, even though not specifically assigned to the First Division, should be held to be within the jurisdiction of that division (1) because historically, so the petitioners

[1] See also n. 1, p. 16, *supra*.

say, disputes involving yardmasters and disputes involving yard-service employees were considered by the same adjustment board prior to 1934, (2) because since 1934 there has been a settled administrative interpretation by the National Railroad Adjustment Board that the First Division has jurisdiction of disputes involving yardmasters, and (3) because yardmasters and yardmen both work in the yard and are, obviously, engaged in related lines of work. We shall discuss these several contentions in the order in which they are stated.

II.

The Historical Background of the National Railroad Adjustment Board Impeaches Petitioners' Construction of the Statute.

The Trainmen and Conductors find no support for their position in the history of the adjustment of disputes prior to the enactment of the present statute. The disputes of yardmasters and yard-service employees in general were not, as petitioners suggest, submitted to the same board. Disputes involving the single craft of yardmasters were not even submitted to one and the same board. It was the inadequacy of the previous system that led to the very different procedure established by the 1934 amendments.

The history of the submission of disputes down to the present time is divisible into four periods: (1) Federal control, 1918-1920; (2) Transportation Act of 1920, 1920-1926; (3) Railway Labor Act, 1926-1934; (4) and Railway Labor Act as amended, 1934 to the present.

(1) *During federal control (1918-1920).*

Each of the three Railway Boards of Adjustment created under the United States Railroad Administration was established by an agreement between a Regional Director of the Railroads, who stood in the place of management, and certain labor organizations. The agreements became effective upon approval by the Director General of the Railroads.[1] By their terms, the agreements were limited to the employees, regardless of their class or craft, who were members of the signatory organizations. Classes or crafts of employees were not included as such. The jurisdiction of each board was defined in the agreements as follows:

> "Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of the railroad and its employees, covered by this understanding * * *."[2]

The employees represented by the petitioners in this case were subject to the jurisdiction of Railway Board of Adjustment No. 1. The labor organizations parties to the agreement creating that board were as follows:

> Order of Railway Conductors
> Brotherhood of Railroad Trainmen
> Brotherhood of Locomotive Engineers
> Brotherhood of Locomotive Firemen and Engineers[3]

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[1] The agreements are set forth in full in a collection of source materials made by Harry E. Jones, Executive Secretary, Eastern Committee for the National Railroad Adjustment Board, entitled *Inquiry of the Attorney General's Committee on Administrative Procedure Relating to the National Railroad Adjustment Board* (Book One), *Historical Background and Growth of Machinery Set Up for the Handling of Railroad Labor Disputes, 1888-1940* (Book Two).

[2] Op. cit. in n. 1, *supra*, Appendix to Book Two, pp. 21, 24, 28.

[3] Op. cit. in n. 1, *supra*, Appendix to Book Two, pp. 19, 20. The agreement was annexed to General Order No. 13 of the Director General of the Railroads, dated March 22, 1918, which created Railway Board of Adjustment No. 1.

If and to the limited extent that the petitioners had at that time any yardmaster members, disputes involving them were submitted to Railway Board of Adjustment No. 1, not because they were yardmasters, but because they were members of the agreeing organizations.

At the same time, there were other yardmasters who were subject to the jurisdiction of Railway Board of Adjustment No. 3, because the agreement establishing that board was signed by the Switchmen's Union of North America.[1] The members of that union are for the most part yard-service employees whose disputes are now subject to the First Division, but a few of its members are yardmasters. If and to the limited extent that the Switchmen had yardmaster members during the period of federal control, their disputes were heard by Board No. 3 for the same reason that disputes of the yardmasters, if any, then belonging to the Trainmen and the Conductors, were heard by Board No. 1.

Provision for adjustment of the disputes and grievances of employees, whether or not organized, but in any event not members of an organization joining in the creation of one of the three Railway Boards of Adjustment, was made as follows in Circular No. 3 issued August 30, 1918 by the Division of Labor of the United States Railroad Administration:

> "(c) When employees are represented by Railway Boards of Adjustment, the procedure as to all controversies within the scope of their duties will be as directed in general orders creating such boards. The fact that certain employees are not represented by Railway

[1] The other labor parties were the Order of Railroad Telegraphers, the Brotherhood of Railway Clerks, and the United Brotherhood of Maintenance-of-Way Employees. The agreement was annexed to General Order No. 29 of the Director General of the Railroads, dated May 31, 1918, which created Railway Board of Adjustment No. 3.

Boards of Adjustment will in no manner deprive them of any of the benefits accruing from such boards. An assistant to the Director of the Division of Labor has been appointed, and a staff of representatives has been organized, for the especial purpose of rendering the same service to such employees as though represented by a Railway Board of Adjustment. Boards of adjustment have been created by understanding with the larger organizations of employees for the convenience of handling such matters and to relieve the Director of the Division of Labor of adjusting same. It is not practicable to create Railway Boards of Adjustment, except for the larger organizations of employees."[1]

Circular No. 3 further provided in detail for the method of handling requests for adjustments in wages by "employees *not* represented by Railway Boards of Adjustment" and personal grievances or controversies arising under the interpretation of wage agreements and all other disputes arising "between officials of a railroad and its employees *not* represented by Railway Boards of Adjustment." If not settled on the property, such disputes were referable to the Director of the Division of Labor of the United States Railroad Administration.[2]

It is apparent that, during the period of federal control, the great bulk of railroad yardmasters, who were then, as now, *not* members of the petitioner organizations, did not submit their disputes to Railway Board of Adjustment No. 1; that yardmaster disputes could be heard by any one of three agencies; and that wherever yardmasters submitted their disputes, if any, they did not submit them as members of a particular craft, but merely as employees belonging, or not belonging, to particular labor organizations.

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[1] Op. cit. in n. 1, p. 37, Appendix to Book Two, p. 31.

[2] Op. cit. in n. 1, p. 37, Appendix to Book Two, pp. 31-32.

The scheme for the submission of disputes and grievances during the period of federal control offers no support whatever for the argument that yardmasters and yard-service employees have always been aligned together and that their disputes have always been heard by one and the same board. Jurisdiction to hear and decide all disputes during that period depended not upon a classification according to crafts or jobs, as it does now, but upon labor representation.

As a matter of historic fact, disputes and grievances involving yardmasters in the present sense of the term were practically if not wholly non-existent during the period of federal control. Yardmasters at that time were not generally considered "employees," much less "yard-service employees"; they were classed and treated as "officials." The United States Railroad Administration did not place yardmasters as a class of employees under the Supplements to General Order No. 27, dealing with the wages of railroad employees, although Section (a) of Article 2 of that order covered the percentage wage increase applicable to all railroad workers receiving up to $250 a month and therefore affected some yardmasters. Instead of dealing with yardmasters as a class of employees under the Supplements to General Order No. 27, the Director General of the Railroads separately authorized certain rates of pay and working conditions for yardmasters and ordered the Regional Directors to put them into effect.[1]

In contrast, several Supplements to General Order No. 27 related to yard-service employees as a class, or to particular crafts within that class. Supplement No. 22, for instance, dealt with the rates of pay of engine foremen (yard conductors) when acting as "footboard yardmasters"

[1] E. g., Supplement No. 6 to Circular No. 28, dated October 17, 1918, issued to the Northwestern Railroads by the Regional Director for the Northwestern Region.

(yard conductors performing certain extra duties ordinarily assigned to yardmasters and receiving extra pay therefor). In no sense was this Supplement intended to cover yardmasters as a class; it covered the class of engine foremen or yard conductors. Supplements Nos. 15, 16, 23, 24, and 25, with Interpretations and Addenda, covered yard-service employees. For example, Supplement No. 15 related to "Yard Service Article XII—Rates of Pay, Engineers, Firemen, Helpers"; Supplement No. 16 related to "Yard Service Article XII—Rates of Pay, Foremen [that is, yard conductors], Helpers, Switchtenders."

There is no showing in the record that the petitioner organizations had any active members employed as yardmasters during the period of federal control.

(2). *Under the Transportation Act of 1920* (*1920-1926*).

The Transportation Act of 1920, c. 91, 41 Stat. 456, superseded the arrangements set up during the period of federal control. Under this Act, adjustment boards were authorized to be created by agreement. Here again, as it was during federal control, the jurisdiction of any board so created extended only to the disputes of employees who were members of the organizations that joined with the carriers in setting up that particular board.[1]

[1] Title III of the Transportation Act of 1920 was captioned "Disputes between Carriers and their Employees and Subordinate Officials." Section 301 of the Act, under this Title III, provided that any dispute not decided in conference might be submitted to any board authorized by Title III to hear and decide it. Section 302 then provided that so-called Railroad Boards of Labor Adjustment might be established "by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof." Section 303 gave these Adjustment Boards jurisdiction to hear and decide "any dispute involving only grievances, rules, or working conditions" (not decided in conference as provided in Section 301) "between the

Two types of boards were set up under the Transportation Act of 1920. The first were system boards of adjustment, each confined to one railroad, which entered into an agreement or agreements with one or more classes of its employees creating a board of adjustment for that particular railroad system.[1]

The second were the Train Service Boards of Adjustment created by agreement for the purpose of handling the disputes of members of the four brotherhoods that had been represented on Railway Board of Adjustment No. 1, namely, the two that are petitioners in this case, Order of Railway Conductors and Brotherhood of Railroad Trainmen, and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. In lieu of one national board, three regional boards were set up. The brotherhoods entered into one agreement with certain carriers creating the Train Service Board of Adjustment for the Southeastern Region, August 15, 1921; into another agreement with certain other carriers creating the Train Service Board of Adjustment for the Western Region, August 25, 1921; and into a third agreement with still other carriers creating the Train Service Board of Adjustment (Eastern), November 9, 1921.[2]

The several organizations that represent 78% of the yardmasters (as shown in the table on page 5 of this brief) were not parties to any of the agreements just mentioned. It is apparent, therefore, that the only yardmasters

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carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board." In a word, the jurisdiction of any Adjustment Board over a party to a dispute depended solely upon whether that party was *represented* on the Board.

[1] Op. cit. in n. 1, p. 37, Book Two, p. 407.

[2] Op. cit. in n. 1, p. 37, Book Two, p. 407, Appendix to Book Two, pp. 39, 43, 50.

and yard-service employees whose disputes could be heard by the Train Service Boards of Adjustment were those belonging to the four brotherhoods mentioned above, which included in their membership many yard-service employees but at that time comparatively few yardmasters, if any, and since many railroads employing members of the Trainmen and the Conductors were not parties to the agreements, the jurisdiction of the Train Service Boards of Adjustment did not even embrace all members of those brotherhoods. Participation in the creation of a board was the basis of jurisdiction. An employee would present his dispute to a particular board only if that board had been set up jointly by the labor organization of which he was a member and the carrier of which he was an employee. Furthermore, the fact that both the yardmasters, if any, and the yard-service employees belonging to those organizations could submit their disputes to the Train Service Boards of Adjustment was due solely and entirely to their membership in the organizations. The jurisdiction of the Train Service Boards was thus definitely not based on a classification by work or crafts, and by no stretch of the imagination could it be said that it was based on an administrative or trade interpretation of the term "yard-service employees" as being inclusive of yardmasters.[1]

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[1] The jurisdictional provisions were the same in all three of the regional agreements covering the members of the four brotherhoods. See op. cit. in n. 1, p. 37, Appendix to Book Two, pp. 39-40, 43-44, 50-52. They read as follows:

"(1) That all disputes growing out of personal grievances or out of the interpretation or application of the schedules, agreement or practices now, or hereafter established on the railroads signatory hereto, which can not be adjusted by direct conference between representatives of the individual railroad and its respective employees shall be disposed of in the following manner:

• • • • •

"(8) Disputes arising between a railroad and its employees covered by this agreement will be handled, etc.

• • • • •

"On a written petition signed by not less than one hun-

During the period 1920-1926, approximately 4,000 decisions in adjustment and other cases were also handed down by the Railroad Labor Board created pursuant to Section 304 of the Transportation Act of 1920.[1] The adjustment jurisdiction of the Labor Board was confined neither to the disputes of specified crafts only nor to the disputes of any particular labor organization or organizations. Section 307 (a) of the Act directed the Railroad Labor Board to hear and decide any dispute involving grievances, rules, or working conditions on which an adjustment board had deadlocked, if the adjustment board certified the deadlock to the Labor Board; the Labor Board was also authorized to act on its own motion if it determined that an adjustment board had deadlocked or failed to consider a dispute with due diligence, and it was authorized to handle disputes in the first instance in cases where an appropriate adjustment board had not been organized pursuant to the provisions of Section 302 of the Act.

It was under the Transportation Act of 1920 that yardmasters were first definitely recognized and treated as "employees," rather than as "officials." The term "subordinate officials" was invented for them and certain other employees, but at no time during the period 1920-1926 were yardmasters classed with or treated as yard-service employees.

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dred unorganized employees of the classes covered by this agreement, directly interested in the dispute the Board shall hear and decide any dispute covered by this agreement; provided, that no dispute over an interpretation of an existing agreement, rule or practice which has been agreed to or accepted by the management and the duly constituted committee representing the employees, parties thereto, shall be considered as a dispute under this agreement.

"(9) No matter shall be considered by the Board unless referred to it in the manner herein prescribed."

[1] See *Decisions of the United States Railroad Labor Board*, Vols. I-VII, 1920-1926.

Section 300 (5) under Title III of the Act provided as follows:

> "The term 'subordinate official' includes officials of carriers of such class or rank as the [Interstate Commerce] Commission shall designate by regulations • • •."

Pursuant to this section the Interstate Commerce Commission issued a regulation designating the class of employees to be included under the term "subordinate official" under Transportation Act of 1920. Yardmasters, other than general yardmasters at large and important switching centers, were among those named.[1]

The United States Railroad Labor Board, in issuing its Decision No. 2, dated July 20, 1920, which increased the rates of pay of large numbers of railroad employees, including yardmasters and yard-service employees, separately considered and treated those two classes of employees.[2] Article VI of Decision No. 2 relates to "Engine Service Employees," under which, in Sections 3 and 4, under "Yard Service," the rates of pay of engineers, firemen, helpers, hostlers, and hostler helpers are shown. Article VII relates to "Train-Service Employees," and in Section 4 thereof, entitled "Yard Service," the rates of pay of foremen (yard conductors), helpers, and switchtenders are shown. In short, the cited passages deal with train- and engine-service employees in yard service, otherwise known as yard-service employees. On the other hand, the rates of pay for yardmasters are shown in Article XI, which is entitled "Other Supervisory Forces."

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[1] *Ex parte No. 72*, "Regulations designating the classes of employees that are to be included within the term 'subordinate official' under Title III of the Transportation Act, 1920," dated November 24, 1920.

[2] *Decisions of the United States Railroad Labor Board*, Vol. I, p. 13.

Similar classifications were observed in Decision No. 147, dated June 21, 1921, in which rates of pay were decreased.[1]

There is no evidence in the record that the petitioner organizations had any active members employed as yardmasters during the period 1920-1926. In its Decision No. 1266, dated October 13, 1922, the Railroad Labor Board for the first time provided for standard rules governing the working conditions of yardmasters.[2] Parties to this proceeding were certain railroads and the Railroad Yardmasters of America, but not the petitioner organizations.

(3) *Under the Railway Labor Act (1926-1934).*

The Railway Labor Act of 1926, c. 347, 44 Stat. 577, which superseded the Transportation Act of 1920, likewise directed that boards of adjustment should be created by agreement. Each agreement was required to specify the group or groups of employees covered by the adjustment board which it created.[3]

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[1] *Decisions of the United States Railroad Labor Board*, Vol. II, pp. 151-153.

[2] *Decisions of the United States Railroad Labor Board*, Vol. III, p. 765.

[3] The Act provided in Section 3 for so-called "boards of adjustment" to be created "by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees." The statute did not specify the jurisdiction of any such board over the parties to a dispute, except in Section 3 as follows:

"The agreement:

* * * * * *

"(b) Shall state the group or groups of employees covered by such adjustment board.

* * * * * *

"Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

The three original agreements creating the eastern, southeastern, and western Train Service Boards of Adjustment were continued in effect under the Railway Labor Act of 1926.[1] An additional agreement, entered into by the four brotherhoods and certain carriers, created the Southwestern Regional Train Service Board of Adjustment, April 4, 1928.[2] This agreement defined the types of disputes that would be heard and expressly limited the jurisdiction of the Board as follows:

> "(B) The groups of employees covered by the adjustment board are those represented by:
> Order of Railway Conductors
> Brotherhood of Locomotive Engineers
> Brotherhood of Railroad Trainmen
> Brotherhood of Locomotive Firemen and Enginemen."[3]

The Railway Labor Act of 1926 also authorized individual carriers and their employees to enter into agreements creating adjustment boards. Under this authorization the system boards previously established were continued, and, in fact, the number of such boards increased.

As under the Transportation Act of 1920, so under the Railway Labor Act of 1926, the only yardmasters' and yard-service employees' disputes that could be heard by the Train Service Boards of Adjustment were those of members of the four brotherhoods. Large numbers of yard-service employees, such as those belonging to the Switchmen's Union of North America, were not subject

[1] Modifications not material in the present connection were made in the agreement for the Western Region on April 17, 1928, and May 17, 1933, and in the agreement with certain eastern lines on February 7, 1928, and April 18, 1933. Op. cit. in n. 1, p. 37, Book Two, p. 410.

[2] Op. cit. in n. 1, p. 37, Book Two, p. 410, Appendix to Book Two, p. 57.

[3] Op. cit. in n. 1, p. 37, Appendix to Book Two, p. 58.

to the jurisdiction of the Train Service Boards of Adjustment, and only the comparatively few yardmasters belonging to the signatory organizations were subject to that jurisdiction. The record does not show how many active members of the petitioner organizations were employed as yardmasters during the period 1926-1934, or how many disputes of yardmasters were submitted to the Train Service Boards of Adjustment, if there were any such. The "alignment" of yardmasters with yard-service employees in the petitioner organizations was at best just barely measurable, for in 1936, the earliest date showing any such "alignment" at all, the petitioner Order of Railway Conductors did not represent yardmasters on *any* road and the petitioner Brotherhood of Railroad Trainmen represented them on *four* roads having a mileage of only 3,121. Practically all represented yardmasters at that time were found in other organizations: the intervenor Railroad Yardmasters of America (18 roads with 57,281 miles), the Railroad Yardmasters of North America (3 roads with 2,842 miles), and the system associations (19 roads with 50,082 miles).[1]

In view of the situation as it had existed long prior to the 1934 amendments, it is difficult to see how there could have been any intention in 1934 to include yardmasters within the term "yard-service employees" in the statement of the jurisdiction of the new First Division. There was no reason why there should have been any such intention. The two crafts had never been regarded or treated for any purpose as forming a single group.[2] It seems perfectly clear that the thought behind the creation of the new First Division was to give to it the disputes, and only those, of train- and engine-service employees engaged

[1] Second Annual Report of the National Mediation Board, 1936, pp. 24-25.

[2] See n. 1, p. 19, *supra*.

in road and yard service. If yardmasters had been thought of, they must necessarily have been mentioned, for they had never before 1934 been aligned or classed with those employees. The testimony of the chairman of the legislative committee of the Railway Labor Executives Association, given before the House committee when the 1934 amendments were under consideration, is revealing:

> "Division 1 shall have jurisdiction over controversies affecting the train, engine and yard-service employees. That is, the switchmen and the engineers and the firemen and conductors, and the trainmen and *other related train-service employees.*"[1]

(4) *Under the Railway Labor Act as Amended (Since 1934).*

The many unsatisfactory features of the old system caused the enactment of the 1934 amendments establishing jurisdiction on the basis of designated crafts. Petitioners' attempt to dismiss the 1934 amendments as really creating nothing new and different is not well conceived. The change from boards created by agreement to boards created by statute, and having prescribed rather than conventional jurisdiction, was in the proper sense of the word radical.

This Court has commented on the 1934 amendments as follows, in *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711, 725-727 (1945):

> "Prior to 1934 the parties were free at all times to go to court to settle these disputes. Notwithstanding the contrary intent of the 1926 Act, each also had the

[1] From the statement made May 24, 1934 by George M. Harrison, President of the Brotherhood of Railway Express and Station Employees, in *Hearings before the Committee on Interstate and Foreign Commerce*, House of Representatives, 73rd Congress, Second Session, on H.R. 7650, p. 82.

power, if not the right, to defeat the intended settlement of grievances *by declining to join in creating the local boards of adjustment provided for by that Act.* They exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working of the machinery. * * * To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. *Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them.* Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation."

No longer is the jurisdiction of an adjustment board determined by the representation of a particular labor organization, or left to agreement; it is defined strictly in terms of disputes involving specified crafts of employees, *regardless of the labor affiliations of such employees.* The new boards of adjustment, now called divisions of the National Railroad Adjustment Board, were not created by signed agreement, as were the prior boards, but by statute. The jurisdiction of the First Division is confined to "disputes involving train- and yard-service employees," while that of the Fourth Division extends to the disputes of water carrier employees *and* the disputes of "all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions."

By reason of the new scheme of jurisdiction established in 1934, the membership of any labor organization may find it necessary to go to more than one division of the National Railroad Adjustment Board.

The Order of Railway Conductors includes Pullman conductors among its membership. Disputes involving such employees are subject to the jurisdiction of the Third Division, and the Order of Railway Conductors has so submitted them.[1] Disputes involving dining-car employees are also subject to the jurisdiction of the Third Division, and disputes involving such employees who are members of the Order of Railway Conductors are submitted to that division.[2] The Brotherhood of Railroad Trainmen includes dining-car employees among its membership, and their disputes are referable and, in fact, are regularly submitted to the Third Division by the Brotherhood of Railroad Trainmen, as is shown by numerous awards of that Division.[3] The Brotherhood of Railroad Trainmen has no member representative on the Third Division, and such a board, prior to 1934, would for that reason have had no jurisdiction over the disputes of an employee belonging to the Trainmen.

It is not clear from petitioners' broad and general discussion of the historical material in Part I of their Argument (pp. 15-26 of petitioners' brief) precisely what light it is supposed to cast on the meaning of the statutory term. If the discussion has any point at all it must be assumed that it was intended to create an impression that yard-

[1] See Third Division Awards 2285, 2996, 2363, and 2364.

[2] See Third Division Awards 836, 1029, 1104, 1107-1111, 1191, 1377, and 1436.

[3] See Third Division Awards 493, 549, 550, 695-697, 701-704, 782, 796, 905, 929, 991, 1026, 1027, 1097-1100, 1105, 1132, 1207, 1235, 1236, 1350, 1433, 1999, 2002, 2229, and 2259-2261.

master disputes were handled as they were prior to 1934 because somebody thought that yardmasters were "yard-service employees." Nothing could be further from the fact. It is entirely beyond dispute that the criterion under the several previous systems was not whether the employee was a member of a particular craft, but whether he was a member of a particular labor organization and an employee of a particular carrier.

If, in disregard of the terms of Section 3 First (h), the District Court had taken for its guide the jurisdictional pattern of the earlier adjustment machinery, it could not have found that any one of the four present divisions has jurisdiction of all yardmen or of all yardmasters and, indeed, could have reached no conclusion reconcilable with the statute. In the light of these facts the Circuit Court of Appeals properly held, we submit, that the District Court was right in concluding that the alleged "historical alignment" of yardmasters and yard-service employees was not helpful in determining the meaning of the present statute. R. 277.

III.

Petitioners' Reliance Upon an "Administrative Interpretation" of the Statute.

It is argued here, as below, that the jurisdiction of the First Division over yardmaster disputes is established by the settled administrative action of that division. But the facts, as we shall show, are that within three years after the Board began to function, both the First and the Fourth Divisions had deadlocked on the question, and that the rival labor organizations then brought two court cases to determine the issue, for the very reason that the action of the Board had not resolved the controversy but had

only produced confusion in the administration of the statute. In such a record, the elements of administrative interpretation can not be found.

Any consideration of the administrative action of the Board in this matter necessarily involves an examination of the action of two of its divisions, the First and the Fourth, because both have dealt with yardmaster disputes.

The 1934 amendments to the Railway Labor Act became effective on June 21 of that year, but it was not until the spring of 1935 that the several divisions of the new National Railroad Adjustment Board began rendering awards.[1] *The very first administrative action by the Board on the question of jurisdiction over disputes involving yardmasters was a deadlock.* That deadlock occurred between the carrier and the labor members of the Fourth Division in June 1935, on the question of accepting a yardmaster dispute submitted by the Railroad Yardmasters of America and the Northern Pacific Railway Company. As a result of the deadlock, the dispute was shown undocketed in the reports of the Fourth Division for the years 1935 and 1936.[2] Its ultimate disposition does not appear in the annual reports or published awards of the Fourth Division. Another deadlock on the question of jurisdiction occurred in the Fourth Division in 1937 over two yardmaster disputes submitted by the American Railway Supervisors' Association.[3]

In January 1938 the carrier and the labor members of the First Division deadlocked on the question of jurisdiction specifically in four cases involving yardmasters (Dockets 1198, 4503, 4504, and 4505.) A statement of the

[1] See note 3, page 6.

[2] See Annual Reports of the National Mediation Board, including Reports of the National Railroad Adjustment Board, 1935, p. 58, 1936, p. 46.

[3] Op. cit. in n. 2, *supra*, 1937, p. 34.

carrier members' position was filed in the proceedings on March 1, 1938.[1]

On March 15, 1938 the Railroad Yardmasters of America filed disputes involving three Southern Pacific yardmasters with the Fourth Division, which deadlocked again, whereupon the Railroad Yardmasters of America filed suit in the United States District Court in Chicago against the carrier and the labor members of the Fourth Division (Chancery No. 16031) for a mandatory injunction to compel them to hear the disputes. R. 157-158. The Fourth Annual Report of the Fourth Division discloses (p. 46) that on June 30, 1938 the carrier and the labor members were still deadlocked on the three Southern Pacific yardmasters' disputes. Judge Holly's decree in Chancery No. 16031, directing the Fourth Division to hear those disputes, was entered on July 11, 1938. R. 158.

Following the entry of the decree in Chancery No. 16031, the Order of Railway Conductors, one of the petitioners here, was at first disposed to accept the jurisdictional question as settled. On August 13, 1938 the Conductors joined with the Great Northern Railway Company in submitting to the Fourth Division two yardmaster disputes, and that division accepted them. On September 12, 1938, however, the Conductors withdrew the disputes and on October 11, 1938 filed them with the First Division. The Great Northern promptly filed an objection to the jurisdiction. The disputes are still pending in the First Division, unheard by reason of the refusal of the carrier members to consider yardmaster disputes. R. 158-159, 160.

Also pending in the First Division, unheard because of the jurisdictional deadlock, is a dispute involving a South-

[1] A copy of that statement accompanied by affidavit of R. A. Knoff, a carrier member of the First Division, has been included with the record transmitted to this Court and is referred to pursuant to stipulation by all parties filed with the Clerk of this Court.

ern Pacific yardmaster, filed over five years ago by the Brotherhood of Railroad Trainmen and docketed on March 26, 1941 as No. 12295. R. 159-160.

The carrier members of the First Division formally notified the labor members in writing, on August 28, 1941, that they would thenceforth not participate in the consideration of any disputes involving yardmasters. R. 160-161. Actually, the deadlock on the First Division antedated this letter by several years, during which a long list of cases involving yardmasters had accumulated in the First Division and remained unheard because of the deadlock. The lowest docket number of such cases is 4535, docketed July 1, 1937. R. 160-161.

A few months after the formal notification served by the carrier members on the labor members, as stated above, the petitioners brought this case (January 12, 1942), claiming a settled administrative interpretation of the Act.

Petitioners' argument on administrative interpretation ignores the facts stated above and relies entirely on certain awards rendered by the First Division. The specific awards are Nos. 1274, 1603, 1648, 1649, 1896, 1897, 2364, 2490, 2491, 2712, 2713, 2970, 3609, 3610, 4077, 4117, 4150, 4548, and 4584, all contained in Plaintiffs' Exhibit K introduced at the trial, except Nos. 4077, 4150, and 2712, which are Exhibits E, F, and G to the plaintiffs' original petition.

Most of these cases are not disputes involving yardmasters, and both courts below so observed. They are in reality nothing more than complaints of yard-service employees, based on the agreements between those employees and the carriers, over alleged violation of the employees' rights under such agreements. In other words, yardmen were insisting upon rights attaching to them in that capacity, granted to them, or so they claimed, by agreements governing the relations between carriers and yardmen. Agreements between the yardmasters and the

carriers were in nowise involved. Most of the disputes related to the promotion of yard-service employees, and the typical complaint was that the agreement with such employees had been violated by the carrier in not giving due consideration to a senior qualified yardman in filling a yardmaster vacancy. Cases of this type are clearly within the jurisdiction of the First Division as disputes involving yard-service employees. See First Division Awards, 1274, 1603, 1648, 1897, 2364, 2490, 2491, 3609, 3610, 4077, and 4150. First Division Awards 4548 and 4584, also relied upon by the petitioners, were likewise cases in which rights claimed to have been granted to employees in their capacity as yard-service employees were at issue. Rights, privileges, and duties of yardmaster employees were not claimed to have been violated, were not submitted for adjustment, and were not involved. R. 227, 277.

Specific mention should be made of three First Division awards relied upon by the petitioners as instances of yardmaster disputes settled by that division, Awards 2970, 2710, and 2711.

Award 2970 was a case not even considered on the merits by the First Division, for upon examination it appeared that it involved the fixing of wages and hours for yardmasters. The case was properly *dismissed*, for the National Railroad Adjustment Board has no jurisdiction to fix the wages and hours of yardmasters or any other employees. It is indeed interesting to find the petitioners in their brief (p. 30) using the case in the following manner: "* * * Award No. 2970 ruled on a yardmaster complaint concerning claims for overtime." That statement implies just the opposite of the ruling actually made by the First Division.

Another questionable use of source material in the

petitioners' brief occurs at page 30, where they cite, in *support* of their claim of harmonious administrative interpretation, Awards 2710 and 2711, in which, as they say, "the members of the First Division gave specific attention to the jurisdictional question." Specific attention was indeed given to the question in those cases, for they, as well as Awards 2712 and 2713, were the very disputes in which the carrier and the labor members deadlocked on the question of jurisdiction to hear yardmasters' disputes and with respect to which the carrier members submitted their memorandum denying jurisdiction (see *supra*, pp. 53-54).

There remain, as the court below observed (R. 277), only three cases, among all those cited by the petitioners, that appear to be proper yardmaster disputes entertained by the First Division without jurisdictional objection made by the carrier members. These are Awards 1649 and 1896 (January and April 1937) and Award 4117 (August 1938). In the first two cases, yardmasters complained of wrongful demotion to yardman positions, and in the last, a yardmaster claimed a rate of pay under one agreement rather than another. In none of these three awards is there a word of discussion of the jurisdictional question at issue here. Each contains a recitation common to all of the thousands of First Division awards: "This Division of the Adjustment Board has jurisdiction over the dispute involved herein."

The weight to be attached to these three cases is negligible.

The explanation of the inconsistent action of the First Division in alternately assuming jurisdiction of yardmaster disputes, and then deadlocking on the question, can only be found in the great volume of its business and the pressure under which it labors. The First Division is a group of ten representatives of the carriers and certain labor

organizations—five on each side, paid by their principals—engaged in "adjusting" minor disputes and grievances in such volume, at such a rate, and in such manner as necessarily to preclude the careful working out and consistent application of principles and great regard for precedent and prior practice.[1]

The last docket number in the First Division on October 29, 1946 was 21,817, indicating an average of more than 1,800 cases filed each year since 1934. The number of awards rendered each year is approximately 1,000. During the fiscal year ending June 30, 1945, 2,233 disputes were docketed, 1,221 awards were rendered, 1,430 disputes were withdrawn, and at the end of that fiscal year 4,720 cases were pending.[2] The First Division is grossly overworked. It is, and has been for years, thousands of cases behind on its docket.[3] President Roosevelt twice tried to find some solution of the problem of the First Division and its docket. His last effort, in February of 1945, was to appoint a Mr. E. J. Connors to study the work of the First Division. The President's letter of instructions to Mr. Connors, under date of February 13, 1945, read in part as follows:

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[1] There is, in fact, a longstanding difference of opinion on the question whether the function of the Adjustment Board is adjudication or something called "adjustment." Likewise, the force of prior awards as precedents is disputed. The labor position in theory is that the divisions are purely adjustment agencies, unfettered by principles, precedents, or any legal concepts, while the carrier position is more strict, but in actual practice the positions appear some times to be reversed. See *The Attorney General's Committee on Administration Procedure, Railway Labor, The National Railroad Adjustment Board and The National Mediation Board,* Monograph No. 17, April 1940, pp. 8-12, 36-43.

[2] Eleventh Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board 1945, p. 61.

[3] The pending cases have increased in number with the passage of time, from 1,095 on June 30, 1935 to 4,720 on June 30, 1945. Annual Report of the National Mediation Board, 1935, p. 39, 1945 p. 61.

"You are hereby delegated to make a study of the disputes filed with the First Division of the National Railroad Adjustment Board and now pending undetermined before that Board and render a full report thereon to me with your recommendations for:

* * * * * *

"(b) Reduction in the number of controversies submitted to the First Division of the Board and improvement in methods and procedure for the more expeditious handling of cases."

In such a mass of business as the First Division has had to contend with, it is not surprising to find, in chronological order, two yardmaster cases in which the carrier members did not raise the jurisdictional objection (Awards 1649 and 1896, January and April 1937), four cases in which they did raise the objection (Dockets 1198, 4503, 4504, and 4505, January 1938), one case again in which they did not raise the objection (Award 4117, August 1938), and finally, in August 1941, a formal statement refusing to participate in the consideration of yardmaster disputes.

The statement in the three yardmaster awards rendered by the First Division without apparent jurisdictional objection from the carrier members (Nos. 1649, 1896, and 4117)—"This division of the Adjustment Board has jurisdiction over the dispute involved herein"—is without significance, because it is merely a reprint from a form devised for the use of the Secretary of the First Division in making up the official reports of awards. Since 1935 all First Division reports of awards have been set up in accordance with this form, known as Form 1.

The first part of the report as prepared by the Secretary is the "Statement of Claim," which is taken from the claim as docketed. Next follows the "Employes' Statement of Facts" and the "Carrier's Statement of Facts" or, if the parties have joined in submitting the dispute, a "Joint Statement of Facts," and in any case these parts

of the report are lifted directly from the written statements filed by the parties. Argumentative matter submitted by the parties is often included next under the headings "Position of Employees" and "Position of Carrier."[1]

The Secretary then reprints from Form 1, in all reports of awards, the following boiler-plate material:

> "FINDINGS: The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:
>
> "The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.
>
> "This Division of the Adjustment Board has jurisdiction over the dispute involved herein.
>
> "The parties to said dispute waived hearing thereon."[2]

Immediately after the routine recitations just quoted, including that as to "jurisdiction over the dispute," the Secretary inserts the only part of the report actually composed by the members of the First Division or by a referee in case the members have deadlocked. The following is an illustration (Award No. 10739, dated June 26, 1945), chosen purposely to expose the anomalous situation that sometimes results from the juxtaposition of the Secretary's "finding" on jurisdiction and a declaration in the award written by the members themselves that jurisdiction does not exist:

> "**[Secretary's finding]** This Division of the Adjustment Board has jurisdiction over the dispute involved herein.
>
> * * * * * *

[1] In discipline cases the facts and the arguments are usually omitted from the published reports.

[2] Or, if there has been a hearing: "The parties to said dispute were given due notice of hearing thereon."

"**[Declaration by members of the First Division]** The Division holds subject of dispute is a negotiable matter between the parties and same is dismissed for lack of jurisdiction.

"AWARD

"Case dismissed."

Another illustration (Award No. 744, dated December 17, 1935):

"**[Secretary's finding]** This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

* * * * *

"**[Declaration by members of the First Division]** The agreement of February 14, 1933, does not specify that rates of pay other than those provided in the schedule should be applicable.

"AWARD

"This Division is without jurisdiction to establish a rate of pay not specified in the agreement or schedule. Case dismissed."

As the quoted examples show, the Secretary's "finding" of jurisdiction is sometimes in conflict with that of the members of the First Division.[1] His rubber-stamp "finding" does not indicate, as petitioners claim, that the members of the First Division have considered the question of jurisdiction. It is of no legal or administrative significance whatever. The reports of the three yardmaster awards rendered by the First Division (Nos. 1649, 1896, and 4117, discussed above at p. 57) contain nothing on jurisdiction except the usual "finding." If the jurisdictional point had been considered, it would have been mentioned in that part of the findings actually written and agreed upon by the members of the First Division, for it appears that when they deal with a jurisdictional question they deal with it expressly, in their own words and not by means of a standard formula applied uniformly by

[1] See also First Division Awards 399, 2970, 3012, 5077, 5288, 9023, 10135, and 10251.

the Secretary in every one of more than 10,000 reports of awards.

The jurisdictional dispute here at issue arose in the very first days of the Board and has never been settled. Prior to 1938 the labor and the carrier members of the Fourth Division deadlocked over the acceptance of yardmaster cases, but since that time they have taken them and rendered many awards. The labor and the carrier members of the First Division deadlocked on the question in January 1938, and since August 1941 the carrier members have refused to participate in the consideration of yardmaster disputes. This case is merely the latest incident in a contest that has been going on since 1935. Petitioners' claim of settled administrative interpretation rests on three yardmaster awards rendered by the First Division on the merits without consideration of the jurisdictional question.

In cases where administrative interpretation may properly be sought as an aid to construction, there must have been definite and unequivocal action on a question of the type under consideration, and it must be authoritative in character, uniform, consistent, and long-continued, otherwise it is not entitled to respect. *United States* v. *Missouri Pacific R. Co.*, 278 U. S. 269, 279-280 (1929); *Estate of Sanford* v. *Commissioner of Internal Revenue*, 308 U. S. 39, 52-54 (1939); *Higgins* v. *Commissioner of Internal Revenue*, 312 U. S. 212, 215-216 (1941); *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16 (1932); *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 643-644 (1933).

From the foregoing outline of the facts it is apparent that within approximately six years after the divisions set up by Section 3 First (h) began to function, the jurisdictional controversy now in issue had reached such a point that three labor organizations representing yardmasters had instituted two separate court proceedings to obtain a judi-

cial construction of the statute for the very reason, contrary to the petitioners' contention, that there was actually no settled administrative interpretation of the law, but only disorganization and controversy. These two resorts to the courts for the construction of this recent statute are a sufficient answer, we believe, to the argument that the issue in this case should be decided on the basis of a settled administrative interpretation. The essential thought of both courts below was that the alleged administrative interpretation was neither substantial nor definite, and we submit that they were right.

IV.

The Argument That the First Division Should Have Jurisdiction of Yardmasters' Disputes, Because It Has Jurisdiction Over Disputes Involving Employees Engaged In "Related Work," Is Unsound.

In their petition filed in the District Court the petitioners alleged (R. 8) that

> "the duties of said yardmasters are confined to the operation of rail carriers and are in direct cooperation and operation with the duties performed by rail carrier employees in train, engine and yard-service • • • ."

That allegation is the basis for an argument that runs through petitioners' whole presentation of the case, below and here, to the effect that yardmasters should be grouped with yard-service employees in the submission of disputes because the two classes of employees are engaged in related lines of work. It is argued that the design of the statute was to divide the disputes of employees among the four divisions according to related lines of work.

Obviously, the yardmaster and all the many crafts that work in the yard under his supervision, including the yard-

service employees, are engaged in related lines of work. All that petitioners' "related lines of work" argument amounts to, in its bearing on the language of the statute, is that yardmasters should be grouped with yard-service employees *because both crafts work in the yard.* This contention is advanced by petitioners notwithstanding the fact that a multitude of other employees and classes of employees likewise work within yard limits, including road-service employees while handling their trains within yard limits, yard clerks (from whose ranks yardmasters are often recruited), telephone and telegraph operators, towermen, signalmen, car inspectors and repairers, track maintenance foremen and laborers, car checkers, yard checkers, and weighmasters, and petitioners agree that none of these employees are called yard-service employees. R. 162, 163-164, 198, 213.

Of necessity there is a very high degree of co-ordination and integration in the work of railroad employees. The various occupations are so closely related that, if jurisdiction over the disputes of any class of employees were to be governed by the working association of that class with some other class, the jurisdictional definitions of Section 3 First (h) would overlap and be reduced to chaos.

There is no denying that the yardmaster is just as closely associated with the yard clerical force, for example, as with the yard-service employees.[1] Yet the yard clerks' disputes must be submitted to the Third Division of the

[1] It is argued that yardmasters frequently acquire the position by promotion from the ranks of yardmen and that they retain the privilege of exercising seniority rights as yardmen if they return to yard service. The record shows that yardmasters are also promoted from other classes of employees—the yard clerical force, for example—and may go back to their former services when necessary, exercising when they do so whatever rights of seniority they may have retained. Plaintiffs' Exhibit A; Defendants' Exhibit 1-H, bottom of page 2; also Plaintiffs' Exhibit D (dispatcher appointed yardmaster).

National Railroad Adjustment Board. See 45 U. S. C., Sec. 153 First (h). On the basis of the plaintiffs' "related lines of work" argument, yardmasters' disputes would be within the jurisdiction of at least two divisions, the First and the Third. Petitioners' argument leads not to a rational workable construction of the statute but only to confusion.

It is not apparent how petitioners can assert the existence of an intent on the part of Congress to divide employees' disputes according to related lines of work, when two of the divisions—the Third and the Fourth—plainly have jurisdiction over the disputes of a conglomeration of employees. The Third Division hears the disputes, among others, of telegraph employees and maids, clerical employees and maintenance-of-way men, train dispatchers and sleeping-car porters. The Fourth Division hears disputes involving employees of carriers by water and "all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions," including numerous supervisory employees whose work is closely related to that of employees whose disputes are expressly assigned to other divisions.[1] It cannot seriously be contended that there is any design running through Section 3 First (h), the governing principle of which is a distribution of jurisdiction among the four divisions according to "related lines of work." Congress simply did not adopt that criterion in establishing the jurisdiction of the several divisions. Specific crafts are assigned to the first three divisions, and the employees not embraced within those specific designations are expressly assigned to the Fourth Division.

In connection with their argument on this subject petitioners assert that difficulties will be experienced in the administration of the statute if a *yardmaster* complaining of

[1] See *infra*, pp. 67-68.

demotion to yardman is required to submit his dispute to the Fourth Division, while a *yardman* complaining of denial of promotion to a yardmaster position must submit his dispute to the First Division. We suggest that this argument is nothing but a play on the similar sounding words "yardmaster" and "yardman." The words "yardmaster" and "yard clerk" lend themselves to the device with equal facility, but no administrative difficulty has resulted from the statutory assignment of disputes involving yard clerks to the Third Division and disputes involving yardmasters to another division which, whether it be the First or the Fourth, is certainly not the Third. The disputes that come before the Adjustment Board are disputes over the interpretation of the working agreements of the various crafts. If the employee is asserting rights alleged to arise out of his agreement as a yard-service employee, his dispute is one for the First Division. If the claim is based on the employee's agreement as a yard clerk, the dispute is one for the Third Division. And if the claim is based on the employee's agreement as a yardmaster, or as a member of any other craft not specifically assigned to one of the first three divisions, the dispute, we submit, is one for the Fourth Division. The difficulties apprehended by petitioners could not arise in the very nature of the situation, and in practice they have not arisen in the last eight years during which the disputes of yard-service employees have been adjusted by the First Division and those of yardmasters by the Fourth.

V.

The Implied Inexperience and Incompetence of the Fourth Division In the Railroad Field.

Petitioners have been concerned to suggest at every possible point in their brief that the Fourth Division is a *marine* body, exclusively staffed by representatives of longshoremen and sailors and water carriers and occupied primarily with the disputes of water carriers' employees. It is argued, although less openly here than below, that that division is not competent to handle yardmaster disputes.

The water carrier jurisdiction is merely a part of the catch-all jurisdiction of the Fourth Division. Congress having specifically enumerated the crafts whose disputes should be submitted to the first three divisions, the creation of the Fourth Division, with jurisdiction defined in general terms, was a necessity. It is a misconception of the Act to think of the Fourth Division primarily as a marine body. The essence of its jurisdiction is generality, embracing all disputes not elsewhere assigned, whether marine or railroad disputes.

As a matter of fact, the work of the Fourth Division is almost entirely in the railroad field. The annual reports of the National Railroad Adjustment Board show that 92% of all of the disputes determined by the Fourth Division have been disputes involving employees of rail carriers not assigned to any of the first three divisions and that in the last three years every dispute docketed with the Fourth Division has arisen in the railroad field.[1]

The following analysis of the published Fourth Division awards reveals that the rail carrier disputes handled by that division have involved the following classes of em-

[1] Annual Reports of the National Mediation Board, 1944, p. 56, 1945, 66, 1946 (not yet published).

ployees, among whom will be noted numerous supervisory employees who, like the yardmasters, are not mentioned in the jurisdictional definitions for the first three divisions:

Yardmaster and assistant yardmaster.

Enginehouse foreman, assistant enginehouse foreman, gang foreman at enginehouse, roundhouse foreman.

General car foreman, car cleaning foreman, freight car cleaning foreman, sheet metal foreman, shop foreman, assistant car foreman, chief electrician, mechanical department foreman, welder foreman, wrecker foreman, labor foreman.

Parlor car, buffet car, and train porters.

Station restaurant waitress.

Watchmen (night watchman, freighthouse watchman, watchman in special agent's department, headquarters building watchman).

Travelling A. R. A. inspector.

Repair track piece work inspector.

Piece work inspector.

Motor coach operator (member of the Brotherhood of Railroad Trainmen).

Assistant medical examiner.

Various employees in the police department (special officer, police sergeant, supervisory employee in police department, patrolman, investigator, employee in police department).

Claim agents.

Grain elevator employees.

Crossing tenders and gatemen.

The labor members of the Fourth Division are representatives of marine organizations. In their assignment to sit on a board, more than 90% of whose work is in the railroad field, the carriers have had no part. The selection of the labor representatives on the entire Board, and their assignment to the several divisions, is in the hands of the national labor organizations, under Section 3 First (c) of the Act.

The carrier members of the Fourth Division are not

representatives of marine carriers; they are all experienced railroad men.

Mr. H. J. Reeser, the present chairman of the Fourth Division, was with the Pennsylvania Railroad from 1913 to 1936, as clerk, chief clerk, statistician, travelling timekeeper, and examiner. Since 1936 he has been an examiner for the carrier members of the First Division (chief examiner since 1942), and his service on the Fourth Division is in addition to that employment.

Mr. E. W. Fowler has served as a carrier member on three divisions of the Board and has been a defendant in this case in two capacities, as *a carrier member of the First Division,* which position he held when the complaint was filed in January 1942, and since July 1944 as a carrier member of the Fourth Division. From July 1935 to January 1936 he was a carrier member of the Third Division. Prior to 1935 Mr. Fowler was employed by various railroads, beginning in 1899 with the Chicago Great Western, as agent and operator, dispatcher, chief dispatcher, superintendent of transportation, general superintendent of transportation, and assistant general manager.

Mr. T. F. Purcell, who has replaced Mr. J. W. Cox (a railroad man) as a carrier member of the Fourth Division, is also at this time Secretary-Treasurer of the Bureau of Information of the Southeastern Railways. His railroad experience began in 1910, in the Aurora locomotive shops of the Burlington Railroad, and he was thereafter a timekeeper, secretary to the general superintendent of motive power, mechanical inspector on the road and in yards, and a staff officer under the vice president in charge of operations.

The carrier membership on the Fourth Division changes from time to time, but since the creation of the division it has consisted exclusively of railroad men.

Notwithstanding the fact that marine disputes come before the Fourth Division because of the catch-all character of its jurisdiction, the fact that 92% of its awards have involved railroad and not marine disputes, and the fact that the only marine members of that division are those selected by petitioners and certain other national labor organizations, petitioners have argued throughout their briefs, here and below, that the First Division is highly competent and the Fourth Division incompetent to handle yardmaster disputes. This is the view of the two petitioner organizations, which represent relatively few yardmasters, as to what is best for the great body of yardmasters, whom they do not represent. The view of the overwhelming majority of yardmasters is that their disputes should be handled by the Fourth Division, as they have been handled, satisfactorily it appears, for the last eight years.

VI.

The Effect of Rule 52(a).

Rule 52(a) of the Federal Rules of Civil Procedure provides as follows:

> "In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; * * *. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

The findings of fact that the petitioners would have this Court overthrow—Nos. 7 to 13[1]—far from being clearly erroneous, are, we submit, amply supported by the evidence. The District Court saw and heard the witnesses

[1] R. 232-233.

and on the whole record found the meaning of the railroad term used in the statute.

Petitioners sought a trial *de novo* in the Circuit Court of Appeals, declaring that that court "was in nowise bound by the findings of the trial court." They would deny any dignity or weight to the findings of the District Court, contrary to Rule 52(a) and the repeated decisions of the federal courts applying that rule. We submit that the clear intent of Rule 52(a) is that the informed judgment of the trial court is not to be regarded merely as a time-consuming procedural step that is of no effect except to clear the way for the submission of the issue to the appellate courts.

In *Apex Electrical Manufacturing Company* v. *Maytag Company*, 122 F. (2d) 182, 187 (C. C. A. 7, 1941), cert. den. 314 U. S. 687 (1941), the court discussed Rule 52 as follows:

> "• • • There was certainly substantial evidence to support this conclusion, and though we might not agree with the trial court, yet we are not privileged to disturb its conclusion in this respect, for findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. Rule 52 of the Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c; *General Motors Co.* v. *Swan Co.*, 6 Cir., 44 F. (2d) 24; *Stevens* v. *Carl Schmid, Inc.*, 2 Cir., 73 F. (2d) 54."

See also *Webb* v. *Frisch*, 111 F. (2d) 887, 888 (C. C. A. 7, 1940); *In re Duvall*, 103 F. (2d) 653, 654 (C. C. A. 7, 1939); *Edwards* v. *Lain*, 112 F. (2d) 343, 346-347 (C. C. A. 7, 1940); *Lewis* v. *United States*, 113 F. (2d) 489, 490 (C. C. A. 7, 1940).

We respectfully ask that the decision of the Circuit Court of Appeals sustaining the declaratory judgment of the District Court be affirmed.

Respectfully submitted,

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December 2, 1946.

APPENDIX.

Section 3 First (h) of the Railway Labor Act.

The jurisdiction of the four divisions of the National Railroad Adjustment Board is defined as follows in Section 3 First (h) of the Act, 45 U.S.C., Sec. 153 First (h):

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, powerhouse employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees."